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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,222	07/29/2003	Timothy Y. Kraushaar	690-01-CIP2	5328
22145	7590	09/08/2004	EXAMINER	
KLEIN, O'NEILL & SINGH 2 PARK PLAZA SUITE 510 IRVINE, CA 92614			RAMANA, ANURADHA	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/629,222

Applicant(s)

KRAUSHAAR, TIMOTHY Y.

Examiner

Anu Ramana

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/10/2003
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Specification

The abstract of the disclosure is objected to due to the use of legal phraseology. Applicant is reminded of the proper language and format for an abstract of the disclosure. Terms such as "preferred embodiment" should be avoided. Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2 and 4-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5-6 of U.S. Patent No. 6,613,012 (Kraushaar) in view of Lee (US 4,999,885).

Claims 1-3 and 5-6 of Kraushaar disclose all elements of invention of claims 1, 2 and 4-10 of the present application except for a third identification element in the form of a sleeve with first and second mating sections or "tabular portions" joined along an integral hinge.

Lee teaches a clip having a pocket or a trough-like portion 4 dimensioned to fit over tubing having different cross sectional sizes and contours, the clip having first and second mating sections or "tabular portions" joined along an integral hinge for orderly arrangement and identification of tubing (Figs. 1 and 4, col. 1, lines 7-13, col. 2, lines 47-60, col. 3, lines 56-68 and col. 4, lines 1-3 and lines 46-61).

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Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a clip, as taught by Lee, as the third identification element in the Kraushaar device, for the purpose of orderly arrangement and identification of tubing.

Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5-6 of U.S. Patent No. 6,613,012 (Kraushaar) in view of Wilmes (US 4,641,443).

Claims 1-3 and 5-6 of Kraushaar disclose all elements of the invention of claims 1-10 of the present application except for: (i) a third identification element in the form of a sleeve with first and second mating sections joined along an integral hinge, and (ii) first and second mating sections in the form of tabular portions wherein one tabular portion has a peg and the other tabular portion has an aperture, the peg dimensioned to fit into the aperture.

Wilmes teaches an identification clip having a sleeve-like body 1 with a pocket or a trough-like portion dimensioned to fit over tubing having different cross sectional sizes and contours, the clip having first and second wings or "mating sections" or "tabular portions" joined along an integral hinge wherein one tabular portion has an arrow-shaped projection 5 and the other tabular portion has a matching accommodation or aperture 4 for receiving projection 5 to enable easy manual closure of the clip (col. 1, lines 7-18, col. 2, lines 18-38, col. 3, lines 31-54 and col. 4, lines 8-11).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute an identification clip, as taught by Wilmes, for the third identification element in the Kraushaar device, wherein so doing would amount to mere substitution of one functionally equivalent structure, namely identification element, for another and the selection of any of these identification elements would work equally well in the claimed device.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (703) 306-4035. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anu Ramana*
September 5, 2004


KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700